



# BARRINGTON AREA CONSERVATION TRUST

*Preserve. Restore. Inspire.*

## Conservation Easements: What You Need to Know

This information is designed to help landowners better understand how conservation easements work as a preservation tool for their land. There is no one-size-fits-all conservation easement and each property is given careful and thoughtful consideration. The BACT is dedicated to ensuring that the easement fulfills the objectives set by the landowner while protecting what makes their land so special.

### WHAT IS A CONSERVATION EASEMENT?

A conservation easement is a way to protect the environmental value of your land while continuing to own it. It is a legal agreement between a landowner and a nonprofit conservation group or public agency that limits use of the land to ensure that the owner's conservation goals for the property are permanently upheld. Goals might include limiting development rights or the right to subdivide for land owners who want to see their land stay in-tact for future generations.

Even if you sell your land or pass it on to your heirs, a conservation easement will protect it from losing the natural character that makes it so special.



### WHAT ARE THE BENEFITS OF A CONSERVATION EASEMENT?

#### PERSONAL SATISFACTION

Knowing that the beauty of your land will be intact for future generations and that your property will continue to promote a healthy environment.

#### OWNERSHIP RETENTION

When you grant a conservation easement on your property, you remain the landowner.

#### FLEXIBILITY

Conservation easements are designed to meet the needs and wishes of the landowners while serving the public good by preserving natural resources. If you want to allow public access (or limit it) you can do so, depending on the type of easement you grant. If you want to continue to live in your home or use other structures on the property, the easement can accommodate that. Perhaps you want to add a building or allow limited development; this can also be written into the agreement.

#### TAX DEDUCTIONS

Conservation easements often qualify the landowner for income tax, estate tax and property tax reductions, depending on the nature of the easement. Typically, the higher the conservation values and the appraised value of the land for development, the greater the tax savings. Landowners generally use conservation easements to protect their lands and waters from undesirable development beyond their lifetimes. Because land subject to a conservation easement might also qualify for income, estate and property tax savings, landowners can often more easily afford to pass on land to their children and grandchildren, because by removing the land's development potential, an easement may lower the property's market value, which in turn can lower estate taxes. Such a tax reduction can make a critical difference in the ability of heirs to keep the land intact; the alternative has often been subdividing the land to pay heavy estate taxes.



# Conservation Easements: What You Need

## HOW IT WORKS: LAND RIGHTS

Land ownership carries with it a bundle of rights—the right to occupy, lease, sell, develop, construct buildings, farm, restrict access, harvest timber, etc. A landowner can give up one or more of these rights for a purpose such as conservation while retaining ownership of the remainder of the rights. In ceding a right, the landowner “eases” it to another entity, such as a land trust. For example, a landowner may give up the right to build additional structures while retaining the right to grow crops. The rights conveyed in a conservation easement have been established over decades of case law as having real value.

The option to place conservation easements on private land is an important private property right that comes with land ownership in the United States. It is a voluntary tool that landowners have at their disposal—one that can help them fulfill their vision for the future of their land.

## LAND REMAINS IN PRIVATE OWNERSHIP

Private property subject to a conservation easement remains in private ownership. A conservation easement does not grant the public access to your property – unless you specify this in the easement. Many types of private land use, such as farming and ranching, can continue under the terms of a conservation easement while owners can continue to live on the property. The agreement may require the landowner to take certain actions to protect land and water resources, such as fencing a stream to keep livestock out or harvesting crops in certain way; or to refrain from certain actions, such as developing or subdividing the land.



*The information contained in this document is not a substitute for independent legal and tax advice.*

## POTENTIAL TAX BENEFITS OF CO

### TAX BENEFITS

When a landowner places a conservation easement onto his property, he/she may be entitled to a number of tax benefits. The landowner may qualify for a federal charitable income tax deduction under IRC section 170(h) if he or she donates the conservation easement, which requires that the easement 1) comply with state law requirements for easements in land; 2) be conveyed to a qualifying organization to hold the easement; and 3) be conveyed “exclusively for conservation purposes” and in perpetuity.

### FAIR MARKET VALUE

Assuming that those requirements are met, the amount of the charitable contribution is based on the appraised fair market value of the easement. This is determined by calculating the difference between the value of the property today without (or “before”) the imposition of the easement and the value of the property today subject to (or “after”) the imposition of the easement. This latter value is determined by the nature of the restrictions and their impact on present and future land use. The resulting amount is the value of the easement for tax purposes.

### “HIGHEST BEST USE”

Generally, a property’s value is based on its “highest and best use,” which often means development. Conservation easements in which development rights are given up can often qualify the property for a substantial value for tax deduction purposes, as the parcel’s development potential no longer exists. Under IRS rules, the donor of the easement is responsible for obtaining an independent appraisal to substantiate the value of the easement for tax purposes and the IRS has published rules as to what constitutes a “qualified appraisal” and a “qualified appraiser” for such purposes.

### TAX SAVINGS

The tax benefits for a landowner in making a gift of an easement are handled much the same way as any other charitable contribution. The law for conservation easements allows for a deduction of 50% of the donor’s income.

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## CONSERVATION EASEMENTS



per year for up to 15 years or until the value of the easement is realized, whichever comes first. For example, a landowner earning \$50,000 a year who donates a \$1 million conservation easement can take a \$25,000 deduction (50% of his or her income) for the year of the donation and for an additional 15 years, generating a total of \$400,000 in deductions. If the landowner is a farmer or rancher, the law allows for a deduction of 100% of his or her income in the first year and then for each of the following 15 years, in this case realizing a maximum of \$800,000 in deductions.

### ESTATE TAX EXCLUSION

In addition to the income tax deduction, under IRC 2031(c), the gift of the easement can also entitle a landowner to qualify for an estate tax exclusion for a portion of the value of the underlying land that is subject to a conservation easement, thereby reducing the estate tax on the value of the landowner's assets that pass to the heirs.

### PROPERTY TAX BENEFITS

There are also local real property tax benefits for landowners who convey conservation easements on their lands. Because property is generally assessed at its fair market value based on its highest economic use and because the easement removes some of the most valuable development rights so that the property's highest and best use is severely limited, local assessors may reduce the assessed value of the property for property tax purposes, thereby lowering the property tax bill on lands encumbered by easements.



## A FLEXIBLE APPROACH

There is no one-size-fits-all conservation easement. Each one is individually tailored to meet conservation objectives and the needs of the landowner. A conservation easement can be designed to accomplish specific objectives, such as to protect water quality or the habitat of endangered birds; or it can be designed more broadly, to protect farmland, open space, views, or land that buffers more sensitive core conservation areas, all of which can offer significant biodiversity conservation benefits. Easements are also tailored to meet a landowner's needs, such as the need to build a house in the future for a daughter's family or the need to continue to derive income from the land through farming.

## LAND IS PROTECTED IN PERPETUITY

Conservation easements "run with the land," remaining with the property even if it is sold or passed on to heirs, thus binding "in perpetuity" (forever) the original owner and all subsequent owners to the easement's restrictions. The organization or agency that holds the conservation easement is responsible for making sure the easement's terms are followed into the future. They monitor and defend the easement legally in the event it is ever violated.

Often landowners have no intention of changing their properties. They plan to keep it in tact as a family farm, for instance, and have no intention of subdividing or developing. But a conservation easement is still attractive to them because it reaches beyond their own lifetimes to ensure the conservation purposes are met forever. An easement binds heirs and other future landowners to comply with the easement's terms, such as prohibiting the building of roads or multiple housing units. It can give peace-of-mind to current landowners worried about the future of a beloved property, whether forest or wetland, stretch of river or the family farm.



# Conservation Easements

## EASEMENT TERMS

The terms of a conservation easement are set jointly by the landowner and the entity that will hold the easement. They are designed to meet the needs of both parties by targeting only those rights (e.g., commercial development) necessary to accomplish specific conservation objectives.

Before setting the terms of an easement, the BACT conducts an assessment of the land and its natural resources to determine the conservation objectives for the land in the context of the larger landscape and prepares a baseline report documenting the condition of the land. Easement terms also should include a plan for monitoring the property to ensure that the conservation goals will be met in future and the easement terms will be enforced.

## MONITORING AND ENFORCING EASEMENTS

In accepting a conservation easement, the BACT is entrusted with the responsibility of ensuring that the terms set by the original landowners are held true forever. The private organizations and public agencies who hold conservation easements in trust must commit staff and resources to monitor the land and ensure easement terms are followed now and into the future. They also must be prepared to legally defend an easement in the event it is ever violated.

BACT policy requires all easements include a baseline report that documents the condition of the property at the time of the signing of the conservation easement. Any future changes in the condition of the property can be measured against the information in this report. BACT policy requires funds be set aside for the perpetual monitoring of the easement.



## PUBLIC BENEFITS OF CONSERVATION EASEMENTS

Even though easements are placed on private land, significant public benefits can accrue. Conservation easements can contribute to improved water quality and are often designed to protect aquifers and watersheds. They can protect a community's scenic beauty, vistas and open space by keeping landscapes free of sprawl. They can help keep landscapes in traditional uses, such as farming and ranching, and can keep small family farmers and ranchers on the land in tough economic times. They are used to buffer national parks and other public lands, keeping development away from boundaries, preserving scenic entrances and giving wildlife habitat an "overflow" outlet onto private land.

## WANT TO LEARN MORE?

If you think you might be interested in placing a conservation easement on your land or simply want to learn more, please contact us. We will send a specialist in land preservation to take a look at your property and talk to you about the process of placing conservation protection on your land. We can also invite our volunteer financial advisor who specializes in conservation tax law to talk about the financial benefits of easements.

Call or email us at 847-387-3149 or [bactrust1@gmail.com](mailto:bactrust1@gmail.com). It would be our pleasure to start the conversation about conservation protection of your land.

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